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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2005-TX-0025; FRL-9502-5]**

**Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); General Definitions; Definition of Modification of Existing Facility**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of Proposed Disapproval.

**SUMMARY:** EPA is withdrawing a proposed disapproval proposed on September 23, 2009, regarding two provisions that have been superseded by later submitted revisions. EPA is taking these actions under section 110 of the Clean Air Act.

**DATES:** The proposed rule published September 23, 2009 (74 FR 48450) is withdrawn as of **[Insert date of publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7212; fax number (214) 665-6762; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:** The EPA is withdrawing severable portions of its September 23, 2009, proposed disapproval of revisions to Title 30 of the Texas Administrative Code (30 TAC) Section 116.10(11)(A) and (B), submitted March 13, 1996; July 22, 1998; and September 4, 2002. These are severable portions of the definition of “modification of existing facility.”

As noted in the September 23, 2009, proposed action on Subparagraphs (A) and (B), the two Subparagraphs are not severable from each other. See 74 FR 48450, at 48452. The two provisions were considered in conjunction with each other as our basis of evaluation in the original proposal. Because (B) is now repealed, and the wording of (A) has been changed in an October 5, 2010, submitted revision,<sup>1</sup> the basis of evaluation in the original proposed action has changed. As proposed July 18, 2011 (76 FR 42078), EPA therefore withdraws its previously proposed action so that the submitted revised Subparagraph (A) and the impact of the repeal of Subparagraph (B) upon the revised Subparagraph (A) may be addressed in a future separate action. This course of action will promote efficiency, mitigate confusion, and facilitate new comments on the future proposed action on the October 5, 2010, submittal with a proper basis of evaluation. Given the need for comments and evaluation of the newly submitted regulatory

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<sup>1</sup> The October 5, 2010. Submittal also redesignated Section 116.10(11) to Section 116.10(9).

wording changes to Subparagraph (A), EPA considers any established deadline under the *Business Coalition for Clean Air Appeal Group (BCCA)* Settlement Agreement to be inapplicable with respect to this provision.

The repeal of Subparagraph (B) in the October 2010 SIP submittal also renders moot and inapplicable any obligation to act on that provision under the BCCA Settlement Agreement. Because Subparagraph (B) was repealed and is no longer before EPA for action, no further action is needed on this provision. Consequently, EPA now withdraws its previously proposed action on Subparagraph (B).

In response to our July 18, 2011, proposed withdrawal of 30 TAC 116.10(11)(A) and (B), we received comments from Texas Industry Project and BCCA Appeal Group. The commenters agree that it is appropriate to withdraw the proposed disapproval of these provisions because Subparagraph (A) has been amended since EPA's proposed disapproval and because Subparagraph (B) has been repealed. Based upon the proposal and consideration of the comments we received, we are withdrawing the proposed September 23, 2009, disapproval of 30 TAC 116.10(11)(A) and (B), as submitted March 13, 1996; July 22, 1998; and September 4, 2002. Subparagraph (A) as it appears in the October 5, 2010, submittal will be evaluated and will be addressed in a separate future action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 29, 2011.

Al Armendariz,

Regional Administrator, Region 6.